VIRGINIA LAW REGISTER

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With the decade ending in 1855 we find names still quite familiar.

The Albemarle Bar, XII.

J. D. Imboden, the noted Confederate General of cavalry, practiced for a short while at the Albemarle Bar. Francis W. Rives and Wm. C. Rives, Jr., son of the statesman, William C. Rives, were also for a short while members of the bar. Both married northern ladies of large means and Francis W. moved to New York City, where he lived and died. William C., Jr., moved to Boston, where he also resided up to his death. He was a gentleman of high culture and literary attainments.

John L. Cochran, who qualified in 1849, was born in the town of Charlottesville in 1827, where he spent his entire life. He was the son of John Cochran of Augusta, who moved to Charlottesville in 1825, a man of great energy and sound judgment who accumulated a handsome estate. His wife, the mother of John L. Cochran, was the daughter of John Lewis of Sweet Springs, a descendant of Andrew Lewis whose statue adorns the group on the Capitol Square in Richmond. Judge Cochran studied law at the University of Virginia in 1847-8 and commenced the practice of his profession in Charlottesville. He was soon appointed Commissioner of Accounts, an office he held until elected Judge of the County Court of Albemarle—the first of the county judges elected under the Constitution of 1868. Judge Cochran did not attempt anything in the way of advocacy, but was a fine Commissioner and excellent business lawyer. As first constituted his court was one of rather wide jurisdiction and Judge Cochran proved himself to be an excellent jurist. Calm, dignified, even-tempered and always desirous of doing justice, Judge Cochran

made a splendid record during his entire incumbency. It fell to him to organize that great charity of Samuel Miller, the Miller Manual Labor School, and to his wise management, both in the selection of the first board of visitors and superintendent, much of the success of that institution is due. When the Readjuster Party obtained control of the State government Judge Cochran, though the unanimous choice of the Bar and of both the representatives and senator of the County, failed of re-election. Of ample means he did not again commence practice but retired to private life. He married Mrs. Massie and by her had children, only one of whom, John L. Cochran, Jr., survives. Judge Cochran died in ———.

William M. Wade, of Scottsville, died suddenly, early in the Civil War, his death cutting short what promised to be a brilliant career. Born in Louisa in 1827, he graduated in law at the University of Virginia in 1846 and commenced practice about 1848, residing at Scottsville. He soon commenced to attract a large and lucrative practice. A man of fine appearance, pleasant manners and first class ability, he was both popular and successful. In 1856 he formed a partnership with R. T. W. Duke, which lasted until his death in 1862. Although subject to heart disease he insisted upon entering the Confederate Army, but was not allowed to undertake active service. He died suddenly in 1862.

Henry Saint George Tucker, who was for a short while also a partner of R. T. W. Duke, was a brother of J. Randolph Tucker and was born in 1828 in Winchester, Va. He studied at the University of Virginia during the sessions of 1843-4-5 and commenced the practice of law in Charlottesville in the late forties. "Saint" Tucker, as he was generally known, was a man of the most brilliant wit and intellect; a poet and novelist, his romance "Hansford, a Tale of Bacon's Rebellion", being worthy of a better fate than that which has befallen it. For many years stories of his bright sayings, his genial wit, his charming personality, were current in Charlottesville. One of his quick wit is worth repeating: There lived in Charlottesville a Mr. William Walstrum who had lost an eye. Meeting Tucker on the Post Office steps on one occasion he showed him an envelope. "Look at this, Saint, and see how this fool has spelt my first name." Saint

looked at the direction, which was *"Willam* Walstrum." "No fool at all, Bill," he replied, "but the best directed letter I ever saw—William Walstrum with one eye out."

He married Elizabeth Gilmer, the daughter of Governor Thomas Walker Gilmer, and by her had one son and three daughters. The youngest, Annie B., married Hon. Lyon G. Tyler, late President of William and Mary College, and the grave has just closed over this lovely woman, as witty, well-nigh as her distinguished father, and graced with all the accomplishments which adorn womanhood. Her marriage to Dr. Tyler united two families sorely bereaved by the bursting of a gun on the U. S. S. Princeton in 1844. Dr. Tyler's grandfather, Mr. Gardiner, being killed at the same time with Mrs. Tyler's grandfather. Governor Gilmer.

Saint Tucker entered the Confederate Army and became Lieutenant Colonel, dying of consumption January 24th, 1863.

Roger A. Pryor was born in Dinwiddie County, Virginia July 19th, 1828. He graduated from Hampden-Sidney College in 1845, studied law at the University of Virginia, and practiced for a short while at the Charlottesville Bar. Subsequently, after his marriage to the beautiful Miss Rice, he moved to Petersburg. He practiced in that city for a short while but abandoned the law on account of ill health and became engaged in newspaper work. In 1852 he was on the editorial staff of the *Washington Union*, and of the *Richmond Enquirer* in 1855. He was Special Commissioner to Greece in 1855 and remained there until 1857, when he returned home and established a paper known as "The South," which did not prove a success. He subsequently was on the staff of the "Washington State," and was elected a representative from Virginia to the thirty-sixth Congress, serving from December 7th, 1859, to March 3rd, 1861. He entered the Confederate Army and became a Brigadier General but later resigned that office and became a member of the Confederate States Congress, later returning to the army and serving in Wickham's Cavalry as a private. He was captured by Union troops, in November, 1864, and confined in Ft. Lafayette, but was soon released.

After the war General Pryor removed to New York and re-

sumed the practice of law and was soon brought into prominence by being retained as counsel in the celebrated suit of Tilton *v.* Henry Ward Beecher. He was later on elected a judge in the city of New York and served with distinction until retired on account of age. He only died at a very recent date.

Judge Pryor was a man of very striking appearance, with hair intensely black which up to a short time before his death did not show a single grey hair. He was a forceful speaker and brilliant orator, and an able lawyer in every sense of the word. He lived far beyond the allotted span of life. Noted in his early youth as a fire-eater, being engaged in one duel and as second in one or two more, in his maturer years he became intensely conservative and made a most enviable record, both as a jurist and lawyer.

Peaceful Picketing: Strikes and the Courts.

Probably the greatest problem which faces America—indeed we might say the world—today is the relation between capital and labor. The right of every man, or set of men, to work or stop at pleasure is unquestionable, so that there is no violation of any contract. Equally true is the right of any man or set of men to work at such wages as may be agreeable, unhindered by any other man or set of men in legitimate labor.

No one can question also the right of any man or set of men to attempt by peaceable persuasion to persuade any worker not to work except under such circumstances as may be agreed upon. It is only when violence is attempted or undue interference with the rights of others becomes imminent that the law steps in to protect alike the workman and the employer.

In a recent case decided by the Supreme Court of the United States—Chief Justice Talt delivering the opinion—the application of Section 20 of the Clayton Act was involved. That portion of the section involved in the instant case was that which forh is an injunction in behalf of an employer against: First, Perstiading others by peaceful means to cease employment and labor; second, Attending at any place where such person or persons may lawfully be, for the purpose of peacefully obtaining or

procuring information; third, Peacefully assembling in a lawful manner and for lawful purposes.

In the case under discussion, whilst the "picketing" involved was not "violent," it was persistent, annoying and intimidating, and seriously interfered with the business of the American Steel Foundries of Granite City, Illinois. An injunction, sweeping in its terms, was granted by the Federal District Court against Tri-City Trades Council, then conducting a wage strike. This injunction enjoined the council in any way "or manner whatsoever" by use of persuasion, threat or personal injury, from interfering with, hindering, obstructing or stopping any person engaged in the employ of the American Steel Foundries in connection with its business or any person desiring to be employed by the foundries, from assembling, loitering or congregating in the neighborhood of the steel foundries, for the purpose of aiding or encouraging others in these things, and from picketing or maintaining at or near the premises of the foundries, or on the streets leading to the premises of the foundries, any picket or pickets to obstruct or interfere with the foundries in the free and unrestricted control and operation of its plant.

The Circuit Court of Appeals of Illinois dissolved this injunction, but the Supreme Court of the United States reversed its decision and perpetuated the injunction, with certain modifications, which permitted persuasion and the location of pickets where they would not obstruct ingress to or egress from the plant, provided there was no effort at intimidation.

We quote a portion of the Chief Justice's opinion.

> "This is a picketing case. Only two men in the employ of the foundries had responded to the calling of the strike by the Tri-City Council. They were picketers, were defendants, and were enjoined. Only one of them was a member of a union of that council. The case involves, as to them, the application of Section 20 of the Clayton act, of which the provisions material here are those which forbid an injunction in behalf of an employer against, first, persuading others by peaceful means to cease employment and labor; second, attending at any place where such person or persons may lawfully be for the purpose of peacefully obtaining or communicating information; third, peaceably assembling in a lawful manner and for lawful purposes.

"The Act emphasizes the words 'peaceable' and 'lawful' throughout the phrases which were used. We do not think that these declarations introduced any new principle into the equity jurisprudence of the Federal courts. They are merely declaratory of what was the best practice always.

"Congress thought it wise to stabilize this rule of action and to render it uniform. Its object was to reconcile the rights of the employer in his business and in the access of his employees to his place of business without intimidation or obstruction, on the one hand, and the right of the employees, recent or expectant, to use peaceable and lawful means to induce prudent principals and would-be employees to join their ranks, on the other.

"If, in their attempts at persuasion or communication, those of the labor side adopt methods which, however, lawful in their announced purpose, inevitably lead to intimidation and obstruction, then it is the court's duty—and the terms of Section 20 do not modify this—so to limit what the propagandists do as to time, manner and place as to prevent infractions of the law and violations of the right of the employees and of the employers for whom they wish to work.

"In going to and from work, men have a right to as free passage without obstruction as the streets afford, consistent with the right of others to enjoy the same privilege. We are a social people and the accosting by one of another in an inoffensive way and offer by the one to communicate and discuss information with a view to influencing the other's action, are not regarded as aggression, or a violation of that other's right.

"If, however, the offer is declined, as it may rightfully be, then persistence, importunity, and following do become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation. The nearer this is to the place of business, the greater the interference with the business and especially with the property right of access of the employer. Such an attempted discussion attracts the curious, or, it may be, interested bystanders. They increase the obstruction as well as the aspect of intimidation which the situation quickly assumes.

"In the present case, under the conditions which the evidence discloses, all information tendered, all arguments advanced and all persuasion used were intimidation—they could not be otherwise.

"It is idle to talk of peaceful communication in such a place and under such conditions. The numbers of the pickets in the groups constituted intimidation. The name 'picket' in-

dicated a militant purpose, inconsistent with peaceful persuasion. The employees were made to run the gauntlet. When one or more assaults or disturbances ensued, they characterized the whole campaign, which became effective because of its intimidating character, in spite of the admonitions given by the leaders to their followers as to lawful methods to be pursued, however sincere.

"Our conclusion is that picketing thus instituted is unlawful and cannot be peaceable, and may be properly enjoined by the specific term of 'picketing' because its meaning is clearly understood in the sphere of the controversy by those who are parties to it. We are supported in that view by many well-reasoned authorities, although there has been contrarity of view. A restraining order against picketing by that name will advise earnest advocates of labor's cause that the law does not look with favor on an enforced discussion of the merits of the issue between individuals who wish to work and groups of those who do not, under conditions which subject the individuals who wish to work to a severe test of their nerves and physical strength and courage.

"But while this is so, we must have every regard for the Congressional intention manifested in the act to the principle of existing law which it declared that ex-employees and others properly acting with them shall have an opportunity, so far as is consistent with peace and law, to observe who are still working for the employer, to communicate with them and to persuade them to join the ranks of his opponents in a lawful, economic struggle.

"Regarding as primary the rights of the employees to work for whom they will, and to go freely to and from their place of labor, and keeping in mind the right of the employer incident to his property and business to free access of such employees, what can be done to reconcile the conflicting interests?

"Each case must turn on its own circumstances. It is a case for the flexible, remedial power of a court of equity which may try one mode of restraint, and if it fails or proves to be too drastic, may change it."

The case is important in more than one aspect: It clearly defines what "peaceful picketing" means and the limitation it puts upon this method of "persuasion" is very salutary. But even more important is the concluding statement of the court that in cases of this character each one must turn on its own circumstances. In other words, that the court does not hold itself down

to any fixed precedent in cases of this and similar nature, but holds itself ready to exert "the flexible remedial power of a court of equity." Courts of equity, as lawyers well know, came into existence in part to afford a remedy against the rigidity of the Common Law, with its hide-bound policy of blindly following precedent. Of late years these courts have had a most unfortunate tendency to adhere too strictly to precedent and to consider themselves bound by decisions of other tribunals. When no fixed property rights are involved, it is indeed a long step to a more exact justice to have tribunals who will consider every case upon its own merits alone.

Shall We Have a 20th Amendment, Making a Uniform Divorce Law?

As a general rule to cure evils by a Constitutional amendment is not unaccompanied by danger, but it does seem to us if there ever was an occasion for a Constitutional amendment it would be an amendment to establish and enforce by appropriate legislation uniform laws as to divorce. We do not believe that marriage ought to be regulated by any federal statute or Constitutional amendment, but that this should be entirely left to local laws; but that divorces should be regulated so as to be made uniform, hardly admits of a question. Neither do we believe that the question of divorce should be put into the hands of the federal courts or regulated in any manner by the federal government *per se;* but we do believe that there should be an amendment to the Constitution providing for a uniform divorce law in all states of the Union, to be administered by the state courts. There are in these states thirty-five different causes for absolute divorce. In twenty years the population of this country has increased sixty per cent, whilst divorces have increased one hundred and sixty per cent. There is one divorce for every eight or ten marriages in the United States. While in England, Wales, Germany, France and Austria divorces are far less than in the United States. We are informed that nearly three times as many divorces are granted in the United States as there are in all of the above mentioned

nations combined. Japan has only one hundred divorces where the United States has one hundred and thirty-five.

We believe most historians contend that one great cause of the decline and fall of the Roman empire was the freedom with which divorces were granted, and we are tending now towards a condition not unlike that of the early days of the Roman empire.

We do not put our reasons for a uniform divorce law upon any question of religion or treating the marriage relation in any other way than as a civil contract; though of course it must be admitted by every well thinking man that, if a civil contract, it is the most important one known to man. We put it upon the high ground that the family relation is the most sacred relation known to man and one which lies at the very foundation of civilized government. There is no reason whatever why five causes for divorce should exist in one state and ten in another. There is nothing in the contract of marriage to make the relationship different in the different states, and if ever uniformity of law was called for it is surely called for in matters of divorce.

Of course the amendment ought to be carefully guarded. It should not force upon any state a divorce law which the state does not have. For instance, South Carolina ought not to be compelled to grant divorces, any more than North Carolina ought to be compelled to refuse them. The law ought to be one restraining divorces to certain causes, and where the laws of a state forbid divorce entirely the Constitutional amendment should not interfere with this clear right of the state. It should be an amendment limiting the power of the states—not increasing them, and if drawn with proper care it would do much to end a most disastrous state of affairs.